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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re DESTINY L., a Person Coming
Under the Juvenile Court Law.

B220416
(Los Angeles County
Super. Ct. No. CK78333)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

D.R. et al.,

Defendants and Appellants.

APPEAL from a judgment of the Superior Court of Los Angeles County.
Valerie Skeba, Juvenile Court Referee. Affirmed.

Marissa Coffey, under appointment by the Court of Appeal, for Defendant and
Appellant D.R.

Roni Keller, under appointment by the Court of Appeal, for Defendant and
Appellant D.L.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County
Counsel, Frank J. DaVanzo, Principal Deputy County Counsel, for Plaintiff and
Respondent.

Four children were declared dependents of the court, after their mother tested positive for methamphetamines at the hospital when she delivered her youngest child. On appeal, both parents challenge the court's jurisdictional findings and dispositional orders. The judgment is supported by the evidence. We affirm.

FACTS

D.R. (Mother) and D.L. (Father) are the parents of four children: Destiny (2003), Pete (2006), Desiree (2007) and Dominic (2009). In July 2009, the family came to the attention of the Department of Children and Family Services (DCFS), when Mother tested positive for methamphetamines at the hospital while delivering Dominic. Mother had no record of prenatal care. Dominic was not tested for drugs until three days after his birth: the delay could be the reason for his negative result. Dominic weighed four pounds, six ounces after a 38-week gestation.

Mother denied methamphetamine usage; however, she admitted to using codeine, Tylenol and Benadryl. Mother informed hospital staff that she and Father used up to six codeine tablets daily. Father denied using codeine or any other drugs. Mother indicated that she was willing to voluntarily drug test, though she did not understand why it was necessary. Father said, "I haven't done anything and I am not going to drug test for anyone."

Mother and Father have a prior history with DCFS. In 2003, DCFS received a report that Mother's then two-year-old son Isaac had a badly fractured thigh, which Mother attributed to a heavy chair falling on the child. Though the attending physician found this explanation hard to believe, the matter was not pursued by DCFS. In 2007, Mother and Desiree both tested positive for methamphetamines when Mother delivered Desiree. Mother denied drug usage, claiming the positive result came from her use of ibuprofen before delivery, and her use of allergy medications one week earlier.

Father was argumentative with the DCFS investigator. He refused to accept voluntary services, indicating that he was "not willing to do anything unless ordered by a Judge." The social worker twice terminated interviews with Father due to his argumentative behavior. Because of Father's lack of cooperation, and his refusal to

believe that Mother might be abusing drugs, DCFS detained the children on July 31, 2009, and placed them in foster care. Dominic remained hospitalized because he was not feeding well.

The foster mother for the three older children reported that they want feeding bottles, which they call “te te.” The caregiver noted that the children had bad teeth, perhaps from using feeding bottles. Despite being six years old, Destiny was still wearing a diaper; further, she assumed a fetal position and asked to be bottle fed. Destiny was “parentified” and insisted on caring for her younger sister Desiree.

On August 5, 2009, DCFS filed a dependency petition. The original petition alleged that Mother has a history of substance abuse and is a current abuser of methamphetamine, amphetamine and prescription drugs, which resulted in a positive drug test at the time of Dominic’s birth; Mother’s drug use renders her incapable of providing regular care for the children, and endangers their physical and emotional health and safety. The petition also alleged that Father has a history of substance abuse and is a current abuser of prescription drugs, which renders him incapable of providing regular care and endangers the children’s health and safety. At the detention hearing, Mother and Father denied the allegations in the petition. The court found a prima facie case for detaining the children.

In an interim review report, DCFS stated that the three older children have always lived with Mother and Father in the home of their paternal grandparents. The grandparents expressed interest in having the older children placed with them; however, they thought they would be overwhelmed by the responsibility of caring for newborn Dominic. On August 21, 2009, the court ordered that the three older children be released to the paternal grandparents. Father was authorized to submit to drug testing through the probation department. He tested negative for drugs on September 9 and 29, 2009.

On September 24, 2009, DCFS filed an amended petition. The amended petition alleged that Father abused Destiny by pulling the child’s hair and calling her “bitch” and “idiot.” Mother abused Destiny by slapping the child across the face. The physical and emotional abuse by Mother and Father endangers Destiny and places her siblings at risk

of harm. The petition further alleged that Mother has a history of substance abuse that renders her incapable of caring for the children, and she tested positive for methamphetamine prior to Dominic's birth; Father allegedly failed to take action to protect the children despite knowing of Mother's substance abuse. The children are endangered by Mother's use of illicit drugs and Father's failure to protect. Finally, the petition alleged that Father has a history of substance abuse and is a current abuser of prescription drugs. Mother and Father denied the allegations in the amended petition.

Father has a criminal record. He was on probation for a domestic violence incident occurring in May 2005. In that incident, he slapped a girlfriend twice in the face and threatened to return with a gun. According to Father's probation officer, Father completed a domestic violence course and tested negative for drugs as a result of his criminal conviction. Mother does not have a criminal record.

DCFS submitted a report in advance of the jurisdiction/disposition hearing, in which it interviewed those involved in the dependency proceeding. Father refused to be interviewed for the report, and had not visited the children since their detention two months earlier. Destiny refused to speak to or make eye contact with the DCFS investigator, so no interview was completed with her. In her interview, Mother denied that she or Father were ever physically or emotionally abusive with the children. They do not spank the children or call them derogatory names. Mother denied past or current drug usage, stating that the hospital "made a mistake with the drug test results" when Desiree was born in 2007, and repeated the mistake when Dominic was born in 2009. Mother said that she used codeine for a kidney infection, but denied usage of any other medication or illicit drug. Mother denied that Father has ever used drugs or abused prescription medications.

The paternal grandparents stated during their interviews that they never saw Father be physically or emotionally abusive to the children. On one occasion, the grandfather saw Mother slap Destiny across the face for spilling soup. Mother, Father and their three older children have lived in the grandparents' home since 2003. The grandparents rarely saw Mother, who was always in her room, or Father, who was always at work and came

home very late. The grandparents ate dinner with the children, while Mother stayed in her room. The grandfather is willing to have Father live in his home; however, he “will never allow” Mother to live in his home again because she “is lazy and does not take responsibility for the children,” and does not cook or clean for them. The grandfather did all of the caretaking of the children because he is home all day, while Father took care of the children’s medical needs, bought diapers, and washed the family laundry.

The children’s foster caregiver, who had the children in her home for several weeks before they were placed with paternal grandparents, told DCFS about child abuse. Destiny told the caregiver that Father pulled her hair and called her “bitch” and “idiot.” When the caregiver informed DCFS, Destiny was taken to the police station to file a report. At the police station, Destiny retracted her statements and would not communicate. Later, Destiny stated that she would never again say anything to the caregiver because the caregiver would tell the social worker.

Mother is 24 years old, unemployed and has five children.¹ Mother’s mother was a heroin addict, so Mother was raised by her grandmother. Mother met Father when she was about 14 years old. They have lived with the parental grandparents since Mother was about 16, and are not married. Father works as a machinist. During the dependency proceeding, Mother and Father moved into a motel, then into an apartment: they refused to disclose the address of their residence to DCFS, so no assessment could be made about the suitability of their living quarters for children. Though Father has not visited the children during the dependency proceeding and has been uncooperative, Mother has visited regularly and has been cooperative. She appears to have a strong bond to the children and is interested in their welfare. Mother tested negative for drugs on August 19, September 8, September 30, October 13 and October 19, 2009. Mother does not understand why the petition was filed. She does not feel that she can care for the children until she secures appropriate housing. She is willing to comply with all requirements to regain custody of the children.

¹ Mother gave custody of her oldest child Isaac to her grandmother, many years ago.

The children were functioning well in the home of their paternal grandparents. During the two to three weeks that he was in foster care, Pete began to use a cup rather than a bottle for feeding. Also, he was toilet trained while in foster care. Destiny was traumatized by her detention and is fearful and anxious. She misses her parents. Desiree is developing appropriately despite being born with a positive toxicological screen for methamphetamines. Dominic was bonding with his foster caregiver, who was concerned about the child's hearing because he does not respond to voices, music or sounds made next to him. He did not cry to indicate hunger or a wet diaper. He has tremors in his hands and legs. The foster caregiver expressed a desire to adopt Dominic.

The petition was adjudicated on October 29, 2009. Father testified that no one from DCFS asked to interview him or for his current residential address. He claimed that he did not tell Mother to refuse to give out their address. Father's testimony was refuted by Mother, who testified that Father instructed her not to give their current address to county counsel.

Father testified that he does not understand why his children have been detained, although he knows that DCFS accuses him of drug abuse and of physically and emotionally abusing his daughter. Also, he understands that Mother tested positive for having (in his words) Sudafed in her system. He flatly denies that Mother uses drugs. Concededly, Father rarely sees Mother because he works 12-hour day shifts, plus overtime. Mother and Father speak by telephone 15 to 20 times per day. Father does not want to cooperate with DCFS because he believes the caseworkers make things up or "add[] something extra" to whatever family members say. Father denies calling Destiny names.

Father pleaded no contest to making criminal threats against his former girlfriend in 2005. He attended 52 sessions of anger management counseling as part of his sentence. Father is going to school and wants to give his family a good life. At home, Father saw no signs of drug abuse, noting that the house was clean and the children were taken care of. He conceded that his father does not like Mother because she "basically was doing nothing around the house." He did not attribute the clean house or the well-

fed children to the efforts of the children's grandfather. Father testified that Mother never struck the children, and called his own father "a liar" for saying that she did. Father denies using drugs or alcohol. He does not believe it is possible that Mother has a drug problem, and attributed her positive tests for methamphetamine in 2007 and 2009 to "a mistake" or to Mother's use of Sudafed. By the same token, Father testified that Mother never used "even an over-the-counter medication."

In her testimony, Mother stated that she took Sudafed and Benadryl one week before Desiree's birth, to treat allergies. As a result, Desiree tested positive for methamphetamines at birth. Mother was told this by "one of the doctors that was walking by the hall." She was not taking Benadryl or Sudafed when Dominic was born; rather, she used Tylenol and prescription codeine. However, Mother previously told DCFS that she used Benadryl and Sudafed, which was a mistake. She denies ever slapping, hitting or spanking any of her children.

The court expressed disbelief that Sudafed caused a false positive for methamphetamines when Desiree was born in 2007. The court added, "But the fact is that we, again, at the birth of another child, have a positive test for methamphetamine. And I just do not believe that it is caused by any other drug other than methamphetamine." The court was particularly concerned that the family "circled the wagons" instead of admitting that drug usage occurred and was inappropriate, particularly during a pregnancy. The court believed that Mother and Father hoped to prevent a full investigation. That tactic would not work here, because the court believed that Mother did test positive for methamphetamine. The court was also concerned by Father's lack of cooperation: it described Father's testimony as "belligerent and defiant." This gave rise to doubts that the court's orders would be followed. As a result, the court was not comfortable returning the children to Mother or Father.

The court sustained the allegation that Mother has a history of substance abuse that periodically renders her incapable of providing regular care of the children. Mother had a positive toxicological screen for methamphetamines in July 2009: Mother's "use of illicit drugs and the father's failure to protect the children endangers the children's

physical and emotional health and safety and creates a detrimental home environment, placing the children at risk of physical and emotional harm, damage and failure to protect.”² The court declared the children dependents of the court. It found that there is no reasonable means to protect the children without removal from parental custody. The court gave custody to DCFS, and placed the children with their paternal grandparents. Family reunification services were ordered. Mother was ordered to have substance abuse counseling with random drug testing, and individual counseling. Father was ordered to have individual counseling to address anger management skills. Monitored visits were authorized, with discretion to liberalize. Both parents were ordered to take parenting classes. Mother and Father appeal.

DISCUSSION

1. Appealability and Standard of Review

Once the court adjudicates the dependency petition, its subsequent dispositional order constitutes an appealable judgment. (Welf. & Inst. Code, § 395; *In re Sheila B.* (1993) 19 Cal.App.4th 187, 196.) “In reviewing the jurisdictional findings and the disposition, we look to see if substantial evidence, contradicted or uncontradicted, supports them. [Citation.] In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.)

2. Jurisdictional Order

a. Findings Against Mother

To support the exercise of dependency jurisdiction under Welfare and Institutions Code section 300, subdivision (b), there must be a showing that the child has suffered or

² The court partially amended the charge; however, it expressly stated, “I’ll leave the last sentence in.” The language we have just quoted is the last sentence of the sustained allegation. Appellants did not object to the inclusion of the last sentence.

there is a substantial risk that the child will suffer, serious physical harm or abuse. (*In re Adam D.* (2010) 183 Cal.App.4th 1250, 1261.) Substantial evidence supports the court's jurisdictional finding that Mother has a history of substance abuse that renders her periodically incapable of providing regular care of the children. Mother and Desiree both tested positive for methamphetamines in 2007. Mother claimed that the positive result came from taking allergy medications one week earlier. In 2009, Mother tested positive for methamphetamines when Dominic was born. This time, Mother blamed codeine for the positive result. The court could—and did—reject Mother's claim that the hospital "made a mistake with the drug test results" in 2007 and 2009. It is evident that Mother used methamphetamines during her pregnancies, resulting in positive drug tests when her youngest children were born.

Apart from the positive drug tests, Mother's behavior suggests a drug addiction. Her older children were in diapers and feeding with baby bottles when they were placed in foster care: given their ages (Destiny was six and Pete was three), it is clear that Mother spent no time providing regular care for her children, despite being home all day. This conclusion is bolstered by the observations of the paternal grandparents, who rarely saw Mother leave her bedroom during the last six years that she lived in their home. Mother did not cook for her children, did not clean for them, and did not even join them for the evening meal prepared by the grandparents. The grandfather stated that Mother took no responsibility for the children, and he did all of the caretaking. Mother's indifference to parenting her children, and her refusal to leave her room, lead to the inference that Mother was nurturing a well-hidden drug habit, rather than nurturing her children.

Based on the DCFS reports and the testimony, the court could reasonably find that Mother's drug usage and her neglectful behavior during the last six years present a substantial risk of future harm to her children. (*In re Adam D.*, *supra*, 183 Cal.App.4th at p. 1261.) It is particularly troubling that Mother exposed two children, in utero, to a dangerous drug like methamphetamine. This level of recklessness suggests that Mother is unconcerned with the children's health and welfare. Finally, it is not at all clear from

the record that Mother is capable of caring for four children by herself, given that their grandfather has done all of the child-rearing to date, and Father is always at work.

b. Findings Against Father

At the outset, we observe that “a jurisdictional finding against one parent is good against both. More accurately, the minor is a dependent if the actions of either parent bring her within one of the statutory definitions of a dependent. [Citations.]” (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397; *In re Alexis H.* (2005) 132 Cal.App.4th 11, 16; *In re Maria R.* (2010) 185 Cal.App.4th 48, 60.) Otherwise stated, “a child may be declared a dependent if the actions of *either parent* bring the child within the statutory definitions of dependency.” (*In re P.A.* (2007) 155 Cal.App.4th 1197, 1212, italics added.)

In this instance, the court properly sustained the allegation that Mother has a history of substance abuse that periodically renders her incapable of providing regular care of the children, and had a positive toxicological screen for methamphetamines in July 2009. Mother and Father live together. There is no indication in the record that they have any intention of living separately. As a result, “the court’s exercise of jurisdiction over the child is appropriate” due to Mother’s drug use, and this moots Father’s claims that jurisdiction is improper. (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1431.) The purpose of the dependency proceeding is, after all, “to protect the child, rather than prosecute the parent.” (*In re Alysha S., supra*, 51 Cal.App.4th at p. 397.) In this case, the children must be protected due to Mother’s drug abuse.

In any event, the sustained allegation includes a finding that Father failed to protect the children. The court struck a sentence regarding Father’s failure to take action when he knew of Mother’s substance abuse; however, the court left intact the last sentence of the charge stating that Mother’s use of illicit drugs and Father’s failure to protect endangers the children’s health and safety. (See fn. 2, *ante*.) If there was any ambiguity in the court’s ruling, it was incumbent upon appellants to ask the court to clarify the ruling at the hearing. They did not seek clarification.

Substantial evidence supports a finding that Father failed to protect the children. After Mother and Desiree tested positive for methamphetamines in 2007, Father had a duty to ensure that during Mother's subsequent pregnancy, she received appropriate prenatal care, including blood testing, which would have revealed whether Mother was using methamphetamines. There are no records that Mother received any prenatal care. As a result, Mother tested positive for methamphetamines when Dominic was born.

Father's vehement denials of Mother's drug usage, coupled with his aggressive refusal to cooperate with DCFS, indicate that Father is protecting Mother, at the expense of his children's health, safety and welfare. Father admitted in his testimony that Mother "basically was doing nothing around the house." Father did not perceive Mother's detachment from her child-rearing responsibilities as a problem, or as a flag for a drug addiction. He gave no credit to his father for taking responsibility for the children by cooking and cleaning for them while Mother spent the entire day in bed, and called his father "a liar" for saying that Mother once slapped Destiny in the face for spilling soup. The exercise of jurisdiction over Father is appropriate, to ensure that he understands that his duty is to protect his children, not to protect Mother from receiving treatment for a drug problem.

3. Dispositional Order

Mother and Father challenge the court's decision to remove the children from parental custody. As discussed above, Mother has an unaddressed, if periodic, substance abuse problem. By inference, this problem keeps Mother incapacitated and in her bedroom all day. The paternal grandparents have reared the children, not Mother. The grandparents now refuse to have Mother in their house because she does not take responsibility for the children. Father is gone for at least 12 hours per day at his job; in addition, he works overtime and, according to his testimony, he attends school when he is not at work. This leaves Mother as the sole caretaker. There is no evidence that Mother is capable of raising four children, effectively on her own. Mother told the DCFS investigator that she cannot care for the children until she secures appropriate housing.

Under the circumstances, the court had no choice but to declare the children dependents of the court and remove them from parental custody. The children may be declared dependents even if the actions of only one parent result in the dependency proceeding. (*In re P.A.*, *supra*, 155 Cal.App.4th at p. 1212.) Although Father maintains that he is “non-offending,” the record shows that the court did sustain findings against Father for failure to protect the children. Even if Father was non-offending, he lives with Mother, who is an offending parent. Father has a criminal history of domestic violence and making terrorist threats, and he displayed overt hostility during the dependency proceeding, both to DCFS employees and in court. The court described Father’s testimonial demeanor as “belligerent and defiant.” An anger management course is appropriate, given Father’s oppositional attitude.

DISPOSITION

The judgment is affirmed.

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BOREN, P.J.

We concur:

DOI TODD, J.

CHAVEZ, J.